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CONCORD, N.H.

August 24, 1955

Mr. Stanton C. Otis, Right-of-Way Engineer
Department of Public Works and Highways
State House
Concord, N. H.

Re: Access to great ponds.

Dear Sir:

In reply to your questions relative to access to public waters I advise as follows:

1. In a situation where the right of way of a highway extends out into the water of a great pond and there is a strip of land six feet wide between the edge of the paved surface and the natural high water mark and the abutter across the highway holds deed of his premises "to the water" of the lake, in the absence of adverse (to the landowner) public use of the area as a beach or way to the water from the traveled surface of the highway for the prescriptive period and in the absence of a layout of the highway as an access road to the great pond, the landowner has certain littoral rights superior to those of the public, Willis v. Wilkins, 92 N.H. 400, including the right to erect wharves and other structures into the great pond beyond the natural high water mark. Hoban v. Bucklin, 83 N.H. 73; State v. Stafford Co., 96 N.H. 92. Under such circumstances the six-foot portion of the highway right of way which lies between the water's edge and the pavement remains the landowner's property to use for all purposes not inconsistent with the public highway right. Lyford v. Iacoma, 75 N.H. 220. It would be proper for vehicles to stop en route along the highway and park there. Using the strip for a boat-launching site, fishing site, picnic site, or other non viatic use, not being within the purview of rights taken would be an invasion of the landowner's rights and a layout to public waters for the express

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purposes of the intended use will be required to effect a public right to use the strip for any purpose except appurtenant to travel along the existing way. Winchester v. Capron, 63 N. H. 605; Bigelow v. Whitcomb, 72 N. H. 473.

2. In a situation where the facts are identical except that the abutter's title extends only to the highway, the abutter's rights depend upon whether or not the title of the land was in one or two separate abutters when the highway was laid out or when the highway easement accrued. The presumption of law is that the rights of owners of opposite lands abutting on a highway extend to the thread of the way so that the soil of one half the road belongs to one, and, of the remaining half, to the other. Mills v. Stark, 4 N.H. 512; Copp v. Neal, 7 N.H. 275; Graves v. Shattuck, 35 N.H. 257.

If the highway came into existence by prescriptive use or by layout over a tract owned by one owner and subsequently that owner deeded to the present landowner or his predecessor in title, the heirs of the owner at the time of establishment of the highway may be the littoral owners of the strip between the traveled way and the great pond subject to the highway easement or the present owner or some intervening owner may hold the fee of the strip subject to the highway easement depending on the language used in the deeds concerned and the intent of the parties. Obviously no hard and fast rule can be laid down in this situation and each case of that sort must stand or fall by corollary facts.

Very truly yours,

George F. Nelson
Assistant Attorney General

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